

**AFFIDAVIT OF BARBARA RAUCH, ESQ.**

I, Barbara Rauch, being of legal age, do hereby depose and state as follows:

1. I am an attorney in the Office of the General Counsel, Oklahoma Department of Environmental Quality (DEQ). I was assigned by the General Counsel to assist the Attorney General's Office and serve as liaison with the DEQ's Central Records Section in the production of documents for the Poultry Integrator's Interrogatories and Requests for Production. I personally read the Defendant's Request for Production and worked with the Manager of the Central Records Section to ensure all responsive information had been produced for the defendants.

2 The DEQ has state statutory authority as well as delegated authority under federal environmental laws to regulate air quality, water quality, solid waste and hazardous waste in the State of Oklahoma. In order to accomplish our goals and to address environmental issues in an effective way, DEQ is divided into six divisions, i.e. Administration, Air Quality, Customer Services, Environmental Complaints and Local Services (ECLS), Land Protection and Water Quality. The Water Quality Division regulates more than 1,700 public water supplies that serve ~~about 3,500,000 customers and all municipal and industrial wastewater treatment plants in the State~~ of Oklahoma. The Customer Services Division includes the State Environmental Laboratory which provides analytical support to DEQ to sample water, wastewater, lakes & streams.

3. In the spring of 2004, the Central Records Section (Central Records) was created within the Administrative Division. Its purpose is to maintain the integrity and security of all public records of the agency. Central Records serves as a clearinghouse for all records requests under the Open Records Act as well as by subpoena. Central Records is staffed with a manager, five (5) full time clerical personnel and a varying number of part time student temporary



employees. Each full time clerical personnel is assigned responsibility for a particular division, i.e. water quality, land protection, etc., and provides backup assistance to co-workers when needed. Central Records contains approximately 195,000 files and receives over one thousand (1,000) requests for records each month, including records subpoenaed as well as complex, multi-divisional requests under the Open Records Act from the Attorney General's Office, other law firms, the Environmental Protection Agency, environmental consulting firms, the media and various citizen groups. Since Central Records is the repository for all operational records of the DEQ, staff members also request documents previously filed in the normal course of their work.

4. Central Records is staffed and organized around the DEQ division programs. For example, Water Quality Division files are divided into three programs, i.e. municipal wastewater, industrial wastewater and public water supply. There are currently 80,000 files in the Water Quality Division files alone.

5. In 2005 – 2006, numerous requests from the Attorney General's Office, the Poultry Integrators and various other groups for documents dealing with the Illinois River watershed has required constant, detailed attention from Central Records. Initially, Central Records staff met with lawyers in the Office of General Counsel and with various program staff

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within each division to determine what kinds of records should be pulled to be responsive to these requests. It was determined to include all documents within the 4 counties comprising the Illinois River watershed, Adair, Sequoyah, Delaware and Cherokee counties. These documents filled approximately 125 record storage boxes.

6. Defendants' first Request for Production required Central Records to supplement and/or update the boxes of documents previously pulled for the Attorney General's Office. DEQ complied with that Request, which was subsequently challenged by the Attorney General's

Office and withdrawn. Defendants' second Request for Production, dated July 2006, again required Central Records to supplement and/or update the boxes of documents previously pulled for the first Request for Production.

7. Central Records staff of five (5) has spent approximately 300 hours per person to pull files of documents requested by Defendants, to research archived documents, and to ensure that filing is current so that document provided are up to date. Each staff member spent about four hours a day for two months working solely on this Request for Production, then the other half of the day working on other Open Records Act requests.

8. The Defendants deposed the Manager of Central Records as the custodian of the agency records. During the deposition, each Request for Production was aloud and the Central Records Manager told Defendants exactly where to find the documents requested – by division, by program, by box number, and when applicable, by file folder and/or by name of facility. See deposition of Rhonda Craig taken November 27, 2006. Additionally, Defendants were provided with an index to said documents entitled "Illinois River Watershed Box Summary" and also with a complete inventory of provided documents by DEQ division, as follows:

- A. Administrative Services Division, box number, type of document;
- B. Air Quality Division, box number, facility and all file folders listed;
- C. Customer Services Division, box number, type of report and each report listed.
- D. Environmental Complaints and Local Services, box number, program (complaints and stormwater), permit # if any, and county listed;
- E. Land Protection Division, box number, program, facility (Sequoyah Fuels) and name of every file listed;

F. Office of General Counsel, (i.e. Legal), box, category (Notice of Violation, Correspondence, Case Files), with each case listed; and

G. Water Quality Division, box number, program, county, file number, name of facility and facility ID number listed.

Defendants then inspected the documents and selected ones were sent out to be copied by a commercial copying service.

8. The original documents were returned to DEQ and re-filed in the normal course of business. The re-filing was necessary due to the fact that it was unduly burdensome to the Central Records staff to continue to keep these documents boxed and staged because of the extra effort required to maintain them there. Additionally, the documents were required to be available to employees to perform their daily functions and to the general public for review.

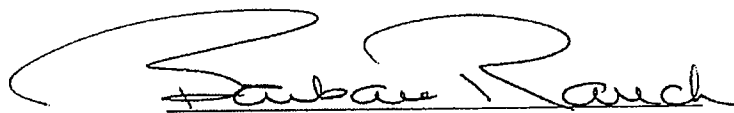
9. DEQ has produced all responsive information identified in Defendants Request for Production in the manner in which documents are maintained in Central Records. Documents were provided by program, by division, as kept in the normal course of business. Boxes were labeled; a summary and an index were provided. Each Request for Production was answered with specificity by box number(s) and file number.

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10. If the DEQ is required to produce the previously-produced documents once again, it will disrupt the work of the agency and be an undue hardship on DEQ personnel. If Central Records is required to pull the previously-produced documents, it will cause a complete cessation of business in that Section while this exercise proceeds. All five (5) staff members and all temporary student employees must stop other work and do nothing else than produce documents for Defendants, not in the manner in which documents are normally kept at the DEQ, but rather in accordance with the wishes of the Defendants. No other Open Records Act

requests for any other person, media or group will be honored. DEQ employees will not be able to access records vital to their performance of job duties. To re-produce previously-produced records will have an adverse affect on the other responsibilities of the DEQ if these documents are once more taken out of circulation.

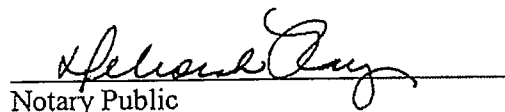
Further affiant sayeth not.

  
Barbara Rauch, Esq.  
OBA # 7425  
Date May 29, 2007

State of Oklahoma     )  
                                      )     ss  
County of Oklahoma    )

On the 29th day of May, 2007, the above-referenced individual appeared before me and affixed her signature hereto.

04002166  
Commission No.

  
Notary Public

3-10-08  
Expiration date

